

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

BATH & BODY WORKS, INC. AND
BATH & BODY WORKS BRAND
MANAGEMENT, INC.,

Plaintiffs,

v.

VICTORIA'S SECRET & CO.,
VICTORIA'S SECRET STORES, LLC,
VICTORIA'S SECRET DIRECT
BRAND MANAGEMENT, LLC, AND
VICTORIA'S SECRET STORES
BRAND MANAGEMENT, LLC,

Defendant.

Case No. 2:24-cv-3882

JURY TRIAL DEMANDED

COMPLAINT

Bath & Body Works, Inc. and Bath & Body Works Brand Management, Inc. (together, "Plaintiffs" or "BBW"), by and through their undersigned counsel, bring this action against Victoria's Secret & Co., Victoria's Secret Stores, LLC, Victoria's Secret Direct Brand Management, LLC, and Victoria's Secret Stores Brand Management, LLC (together, "Defendants" or "Victoria's Secret") and allege the following:

NATURE OF THE ACTION

1. This case concerns blatant infringement by Victoria's Secret of BBW's trademark, OH, CHERRY, which BBW has used in connection with scented body spray since at least as early as March 2024.

2. Despite BBW's widespread and prominent use of the OH, CHERRY trademark over the last six months, Victoria's Secret recently began using the identical mark OH, CHERRY in connection with an identical product.

3. Below are depictions of the parties' OH, CHERRY branded body sprays:

BBW	Victoria's Secret
 <p>A clear glass bottle with a red cap and a red label. The label features a diamond pattern and the text: "BATH & BODY WORKS", "OH, CHERRY", "100% FRAGRANCE", "100%".</p>	 <p>A clear glass bottle with a red cap and a pink label. The label features the text: "pink BODY MIST", "DARK CHERRY", "RED POMEGRANATE", "VANILLA AMBER", "essential oils", "OH, CHERRY", "250 mL / 8.4 fl oz".</p>
Launched March 2024	Launched July 2024

4. Victoria Secret's use of the identical OH, CHERRY mark for identical goods creates a likelihood of confusion in the marketplace and causes both damage to BBW and irreparable harm to the goodwill that BBW has developed in its OH, CHERRY trademark.

5. As detailed below, Victoria Secret's use of the OH, CHERRY trademark in connection with scented body spray constitutes federal false designation of origin under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), trademark infringement and unfair

competition under the common law of the State of Ohio, and violation of the Ohio Deceptive Trade Practices Act, O.R.C. § 4165.02.

THE PARTIES

6. Plaintiff Bath & Body Works, Inc. is a corporation organized and existing under the laws of the State of Delaware, having its principal place of business at Three Limited Parkway, Columbus, Ohio 43230.

7. Plaintiff Bath & Body Works Brand Management, Inc. is a corporation organized and existing under the laws of the State of Delaware, having its principal place of business at Three Limited Parkway, Columbus, Ohio 43230.

8. On information and belief, Defendant Victoria's Secret & Co. is a corporation organized and existing under the laws of the State of Delaware, having its principal place of business at Four Limited Parkway, Reynoldsburg, Ohio 43068.

9. On information and belief, Defendant Victoria's Secret Stores, LLC is a limited liability company organized and existing under the laws of the State of Delaware, having its principal place of business at Four Limited Parkway, Reynoldsburg, Ohio 43068.

10. On information and belief, Defendant Victoria's Secret Direct Brand Management, LLC is a limited liability company organized and existing under the laws of the State of Delaware, having its principal place of business at Four Limited Parkway, Reynoldsburg, Ohio 43068.

11. On information and belief, Defendant Victoria's Secret Stores Brand Management, LLC is a limited liability company organized and existing under the laws of

the State of Delaware, having its principal place of business at Four Limited Parkway, Reynoldsburg, Ohio 43068.

JURISDICTION AND VENUE

12. This Court has subject matter jurisdiction over the claims pursuant to Section 39(a) of the Lanham Act, 15 U.S.C. § 1121(a), and Sections 1331 (federal question jurisdiction) and 1338(b) (unfair competition), 28 U.S.C. §§ 1331, and 1338(b).

13. Supplemental jurisdiction is proper for the state law claims pursuant to Section 1367(a) of the Judicial Code, 28 U.S.C. § 1367(a), because the claim is so related to the federal claims that it forms part of the same case or controversy under Article III of the United States Constitution.

14. This Court has personal jurisdiction over Victoria's Secret because Ohio is the state in which it maintains its principal place of business, and because Victoria's Secret systematically serves a market in Ohio for the goods whose presence in Ohio materially contribute to the irreparable harm and likelihood of confusion between the parties' goods.

15. Venue in this District is proper pursuant to 28 U.S.C. §§ 1391(b) and 1400(a) because Victoria's Secret is subject to personal jurisdiction with respect to this action in this District and a substantial part of the events or omissions giving rise to the claims occurred in this judicial district. Victoria's Secret advertises and sells its goods under the infringing OH, CHERRY trademark in this District.

FACTUAL BACKGROUND

BBW's Use and Ownership of the OH, CHERRY Trademark

16. Founded in 1990, BBW is a well-known American retail company specializing in personal care, fragrances, and home products.

17. Since at least as early as March 2024, BBW has marketed and sold scented body spray under the trademark OH, CHERRY.

18. Over the last six months, BBW has invested substantial resources in the advertising, marketing, and promotion of its OH, CHERRY branded body spray and developing consumer recognition in the OH, CHERRY trademark.

19. BBW's OH, CHERRY branded body spray is promoted, sold, and distributed throughout the United States, including through BBW's official website at www.bathandbodyworks.com and in its 1,850 brick and mortar retail stores.

20. BBW has so far sold over 100,000 bottles of its OH, CHERRY body spray with total sales nearing \$1.5 million. Due to the popularity of the product, and its high demand, BBW is investing even more resources into this product. It is manufacturing and distributing thousands of more bottles of OH, CHERRY body spray to restock its online and brick and mortar stores as the summer turns to autumn, a season associated with blooming autumn cherry trees.

21. For example, BBW launched a new online campaign that went live *today* on the official BBW website <bathandbodyworks.com>.

22. As a result of BBW's investment of resources in the continuous and prominent use of OH, CHERRY, the trademark is recognized by consumers, the public, and the trade as identifying and distinguishing BBW as the exclusive source of the high-

quality goods with which OH, CHERRY is used. The OH, CHERRY trademark represents a significant business investment and considerable goodwill of great value to BBW.

23. BBW owns a pending federal trademark application in the United States for OH, CHERRY (Serial No. 98/710,021) for “scented body spray” (Based on Use) and “body creams; body lotions; body wash; hair care preparations; hand creams; hand lotions” (Based on Intent to Use) in Class 3; and “candles” (Based on Intent to Use) in Class 4. A true and correct copy of the OH, CHERRY application is attached as Exhibit A.

Victoria’s Secret’s Use of the Identical Mark with an Identical Product

24. Victoria’s Secret is an American lingerie, clothing, and beauty retailer.

25. In or around July 2024, Victoria’s Secret started to promote, sell, and distribute a scented body spray under the identical name used and owned by BBW—OH, CHERRY.

26. Victoria’s Secret’s OH, CHERRY products can be purchased online through Victoria’s Secret’s official website at www.victoriasecret.com, its mobile app, and at its thousands of brick-and-mortar retail stores all over the country. On information and belief, Victoria’s Secret ships its OH, CHERRY branded body spray to all 50 states.

27. Victoria’s Secret’s use of OH, CHERRY in connection with the advertising, marketing, offering for sale, and sale of its scented body spray—the exact same product BBW sells—is an obvious infringement of BBW’s exclusive rights in its OH, CHERRY trademark.

28. In a further effort to trade off of BBW's goodwill, Victoria's Secret expanded its OH, CHERRY branded product line to include body lotion. The packaging for Victoria's Secret's boy lotion also prominently displays OH, CHERRY, as shown below.



29. Victoria's Secret's OH, CHERRY mark is identical to BBW's OH, CHERRY trademark.

30. Victoria's Secret's scented body spray is the same type of product, i.e., body spray, that is and has been offered by BBW under its OH, CHERRY trademark.

31. Victoria's Secret's body lotion is highly related and complementary to the body spray offered by BBW under its OH, CHERRY trademark.

32. Both parties market their respective products online, including through the same social media channels and in the same malls and shopping centers.

33. The parties' OH, CHERRY branded goods are targeted and sold to overlapping consumers.

34. Consumer confusion and harm to BBW are not only likely—they are already occurring. Consumers reviewing the Victoria's Secret OH, CHERRY products, including one who noted that it was “not a love for me” *prominently tagged BBW* and then also tagged Victoria's Secret, as reflected below:



35. Exacerbating consumer confusion is the fact that Victoria's Secret and BBW were previously related. Both parties were at one time owned by the same parent company, L Brands (formerly known as Limited Brands). However, in August 2021, L Brands separated Victoria's Secret into a standalone public company, and the two businesses went their separate ways. They are now direct competitors in the body/personal care space.

36. On information and belief, Victoria's Secret had actual knowledge of BBW's OH, CHERRY trademark when it first offered for sale its scented body spray under the identical OH, CHERRY trademark.

37. Upon learning of Victoria's Secret's infringing use of OH, CHERRY, BBW contacted Victoria's Secret to demand that Victoria's Secret cease its unlawful use of OH, CHERRY, among other things. But Victoria's Secret intends to continue to sell tens of thousands of bottles of its OH, CHERRY branded body mist and lotion.

38. Given the identical nature of the parties' marks and goods at issue, and the overlapping channels of trade and customers, Victoria's Secret's use of OH, CHERRY in connection with scented body spray and body lotion is likely to confuse or mislead consumers into believing that there is a connection or association between BBW's OH, CHERRY branded products and Victoria's Secret's OH, CHERRY products.

39. The likelihood of confusion that Victoria's Secret has caused in the marketplace is harmful to consumers and BBW.

FIRST CLAIM OF RELIEF

(False Designation of Origin – 15 U.S.C. § 1125(a))

40. BBW repeats and realleges the allegations contained in the foregoing paragraphs as if fully set forth herein.

41. As described above, BBW owns common law rights in the OH, CHERRY trademark in connection with scented body spray.

42. BBW's ownership and use in commerce of the OH, CHERRY trademark are superior to and predate any use of OH, CHERRY by Victoria's Secret.

43. Victoria's Secret uses OH, CHERRY as a trademark in commerce in connection with scented body spray and body lotion.

44. Victoria's Secret's use of the mark OH, CHERRY in interstate commerce, as described above, constitutes false designation of origin in violation of 15 U.S.C. § 1125(a)(1) because it is without BBW's consent and is likely to cause confusion, to cause mistake, and to deceive as to the origin or source of Victoria's Secret's goods, and/or to cause consumers to believe, mistakenly, that Victoria's Secret is part of, or sponsored, licensed, endorsed, or approved by, or otherwise affiliated with, BBW.

45. Upon information and belief, Victoria's Secret was at all relevant times aware of BBW's prior use of the OH, CHERRY trademark. It nevertheless adopted OH, CHERRY and markets its body spray in a manner that trades off the goodwill owned and earned by BBW, causing confusion that it makes no effort to correct. Victoria's Secret's conduct is therefore willful.

46. Upon information and belief, as a direct and proximate result of Victoria's Secret's violations of 15 U.S.C. § 1125(a)(1), BBW has been and will continue to be damaged.

47. Upon information and belief, Victoria's Secret has realized, and continues to realize, revenue, profits, and other benefits as a result of its unlawful actions to the detriment of BBW.

48. Victoria's Secret's conduct is causing and, unless Victoria's Secret is restrained, will continue to cause, BBW to suffer irreparable injury for which BBW has no adequate remedy at law.

SECOND CLAIM FOR RELIEF

(Common Law Trademark Infringement and Unfair Competition)

49. BBW repeats and realleges the allegations contained in the foregoing paragraphs as if set forth fully herein.

50. As described above, BBW owns common law rights in the OH, CHERRY trademark in connection with scented body sprays.

51. BBW's ownership and exclusive use in commerce of the OH, CHERRY trademark, including in Ohio, is superior to and predates any use of OH, CHERRY by Victoria's Secret.

52. Victoria's Secret's use of OH, CHERRY as a trademark in commerce in connection with body sprays and body lotion, as described above, is without BBW's consent and is likely to cause confusion, to cause mistake, and to deceive as to the origin or source of Victoria's Secret's goods, and/or to cause consumers to believe, mistakenly, that Victoria's Secret and/or its products are part of, or sponsored, licensed, endorsed, or approved by, or otherwise affiliated with, BBW.

53. Victoria's Secret's unlawful activities constitute trademark infringement and unfair competition in violation of the common law of the State of Ohio.

54. Upon information and belief, as a direct and proximate result of Victoria Secret's willful trademark infringement and unfair competition, BBW has been and will continue to be damaged.

55. Upon information and belief, Victoria's Secret has realized, and continues to realize, revenue, profits, and other benefits as a result of its unlawful actions to the detriment of BBW.

56. Victoria's Secret's conduct is causing and, unless Victoria's Secret is restrained, will continue to cause, BBW to suffer irreparable injury for which BBW has no adequate remedy at law.

THIRD CLAIM FOR RELIEF

(Ohio Deceptive Trade Practices Act – O.R.C. § 4165.02)

57. BBW repeats and realleges the allegations contained in the foregoing paragraphs as if set forth fully herein.

58. Victoria's Secret's use of OH, CHERRY as a trademark in commerce in connection with body sprays and body lotion, as described above, is without BBW's consent and is likely to cause confusion, to cause mistake, and to deceive as to the origin or source of Victoria's Secret's goods, and/or to cause consumers to believe, mistakenly, that Victoria's Secret and/or its products are part of, or sponsored, licensed, endorsed, or approved by, or otherwise affiliated with, BBW.

59. Victoria's Secret's unlawful activities constitute deceptive trade practices in violation of O.R.C. § 4165.02(A)(2), (3), and (7).

60. Upon information and belief, as a direct and proximate result of Victoria Secret's willful trademark infringement and unfair competition, BBW has been and will continue to be damaged.

61. Upon information and belief, Victoria's Secret has realized, and continues to realize, revenue, profits, and other benefits as a result of its unlawful actions to the detriment of BBW.

62. Victoria's Secret's conduct is causing and, unless Victoria's Secret is restrained, will continue to cause, BBW to suffer irreparable injury for which BBW has no adequate remedy at law.

JURY DEMAND

Plaintiffs hereby demand trial by jury on all claims and issues so triable.

PRAYER FOR RELIEF

WHEREFORE, BBW prays:

A. That the Court enter judgment in favor of BBW, including injunctive relief, against Victoria's Secret, on all claims for relief asserted in the Complaint;

B. That the Court enter judgment determining that Victoria's Secret infringed BBW's common law rights in the OH, CHERRY trademark and committed acts of false designation of origin under 15 U.S.C. § 1125(a);

C. That the Court enter judgment determining that Victoria's Secret infringed BBW's OH, CHERRY trademark and committed unfair competition under the common laws of the State of Ohio;

D. That the Court enter judgment determining that Victoria's Secret has engaged in deceptive trade practices in violation of O.R.C. § 4165.02(A);

E. That the Court award BBW Defendants' profits, damages sustained by BBW, and the costs of the action, or another amount in its discretion as the court shall find to be just under 15 U.S.C. § 1117;

F. That the Court find this an exceptional case and award reasonable attorneys' fees to BBW under 15 U.S.C. § 1117 and O.R.C. § 4165.03;

G. That the Court grant an injunction permanently enjoining and restraining Victoria's Secret, its officers, employees, agents, attorneys, and all persons acting by, through, or in concert with any of them, from:

- i. using the OH, CHERRY trademark and any confusingly similar mark, word, name, or designation as a trademark, service mark, or trade name in a manner that is likely to cause consumer confusion pursuant to 15 U.S.C. § 1116;
- ii. doing any other act likely to cause confusion or mistake or to deceive consumers into believing, mistakenly, that Victoria's Secret's goods are sponsored, licensed, endorsed, or approved by BBW, or are otherwise affiliated with BBW; and
- iii. unfairly competing with BBW.

H. That the Court issue an order directing Victoria's Secret to file with the Court and serve on BBW within thirty (30) days after the service on BBW of an injunction, or such extended period as the Court may direct, a report in writing under oath setting forth in detail the manner and form in which Victoria's Secret has complied with the injunction;

I. That the Court award BBW such other and further relief as this Court deems fair, just, and proper.

Dated: August 23, 2024

STANDLEY LAW GROUP LLP

By: /s/ Beverly A. Marsh

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